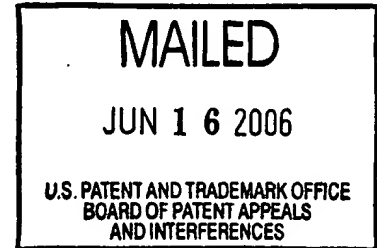# UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte Takashi Sakairi

Appeal No. 2006-0454
Application No. 09/546,719

ON BRIEF

MAILED

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U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Before OWENS, BARRY, and BLANKENSHIP, *Administrative Patent Judges.*

BARRY, *Administrative Patent Judge.*

A patent examiner rejected claims 1-6, 8, and 11. The appellant appeals therefrom under 35 U.S.C. § 134(a). We affirm-in-part.

I. BACKGROUND

The invention at issue on appeal concerns displaying data from sites of the World Wide Web ("Web"). Web sites manage data by "sorting it to" Web pages. (Spec., p. 1, ll. 9-10.) Often, the Web sites also prepare "site maps," which describe connections between pages. (*Id.* at ll. 10-11.) The appellant opines that conventional site maps, however, do not efficiently catalog the data available at sites, nor do they show where the data are located at the sites. (*Id.* at ll. 13-14.)

In contrast, the appellant's Web browser obtains the page structure and the page attributes for pages of a Web site and displays them in a correlated manner. The display of the structure and attributes can be changed by a user via a graphical user interface ("GUI"). (*Id.*, abs.)

A further understanding of the invention can be achieved by reading the following claims.

1. A method for bowsing a web site using a browser program running on a computer, comprising the steps of:

(a) receiving from a server for a web site, a plurality of page structures and a plurality of page attributes for said web site, including information concerning said web site;

(b) displaying said plurality of page structures and said plurality of page attributes on a screen for a user;

(c) receiving, from the user, an input selecting either ones of said plurality of page structures or ones of said plurality of page attributes; and

(d) in response to receiving said input from the user, dynamically changing the display of at least one of said plurality of page structures if ones of said plurality of page attributes were selected and dynamically changing the display of at least one of said plurality of page attributes if ones of said plurality of page structures were chosen, wherein the display that is dynamically changed reflects a correlation between said page structures and said page attributes.

3. The web site browsing system according to claim 2, wherein said page attributes are keywords included in said web pages at said web site, a number of times said keywords appear, sizes of files, a number of files and dates files are updated.

Claims 1, 2, 4-6, and 8 stand rejected under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 6,035,330 ("Astiz") and U.S. Patent No. 6,360,332 ("Weinberg"). Claims 1, 2, 5, and 11 stand rejected under § 103(a) as obvious over U.S. Patent No. 6,525,748 ("Belfiore") and Weinberg. Claims 4, 6, and 8 stand rejected under § 103(a) as obvious over Belfiore, Weinberg, and Astiz. Claim 3 stands rejected under § 103(a) as obvious over Astiz; Weinberg; and U.S. Patent No. 6,426,761 ("Kanevsky") and as obvious over Belfiore, Weinberg, and Kanevsky.

II. OPINION

Our opinion addresses the claims in the following order:

- claims 1, 2, 4-6, 8, and 11
- claim 3.

A. CLAIMS 1, 2, 4-6, 8, AND 11

Rather than reiterate the positions of the examiner or the appellant *in toto*, we focus on the following points of contention therebetween:

- analogousness of Weinberg
- highlighting a correlation.

1. Analogousness of Weinberg

Noting that "Weinberg further teaches that '[t]hese features assist the user in identifying the correspondence between particular step of the test and display elements,'" (Examiner's Answer at 14), the examiner finds, "Weinberg . . . therefore is an analogous art." (*Id.*) The appellant argues "that it is difficult to see any similarity between the stated field of Weinberg and the stated field of the presently claimed invention." (Appeal Br. at 11.)

"Whether a reference in the prior art is 'analogous' is a fact question." *In re Clay*, 966 F.2d 656, 658, 23 USPQ2d 1058, 1060 (Fed. Cir. 1992) (citing *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561, 1568 n.9, 1 USPQ2d 1593, 1597 n.9 (Fed. Cir. 1987)). Two criteria have evolved for answering the question: "(1) whether the art is from the same field of endeavor, regardless of the problem addressed, and (2) if the reference is not within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved." *Id.* at 658-59, 23 USPQ2d at 1060 (citing *In re Deminski*, 796 F.2d 436, 442, 230 USPQ 313, 315 (Fed. Cir. 1986); *In re Wood*, 599 F.2d 1032, 1036, 202 USPQ 171, 174 (CCPA 1979)).

Here, regarding the first criterion, the appellant's invention relates to GUIs.

(Spec., p. 3, l. 11.) For its part, Weinberg generally "relates to user interfaces," (col. 1,

l. 23), more specifically to GUIs. (*See* col. 21, ll. 45, 54; col. 24, l. 37.)

Regarding the second criterion, "[a] reference is reasonably pertinent if, even

though it may be in a different field from that of the inventor's endeavor, it is one which,

because of the matter with which it deals, logically would have commended itself to an

inventor's attention in considering his problem." *Id.* at 659, 23 USPQ2d at 1061. "To

qualify as analogous art under the second criterion, . . . we do not believe that a prior

art reference need be reasonably pertinent to *each and every* problem with which an

inventor is involved; reasonable pertinence to a single such problem suffices." *Ex parte

Gaechter,* 65 USPQ2d 1690, 1692 (Bd.Pat.App & Int. 2002).

Here, one problem faced by the appellant is that of showing a correspondence

between data. More specifically, the appellant's invention "displays [data] in correlation

with each other. . . ." (Spec., p. 3, l. 7.) The reference also faces the problem of

showing a correspondence between data. To wit, its GUI "display[s] captured server

screens in conjunction with corresponding nodes of the hierarchical node structure,"

(col. 3, ll. 12-13), which "assist the user in identifying the correspondence

[there]between. . . ." (*Id.* at ll. 23-24.) Because the respective inventions of the

appellant and Weinberg both relate to GUIs or seek to show a correspondence

between data, we find that the reference is analogous art.

2. Highlighting a Correlation

The examiner finds that "the combination of Astiz and Weinberg teaches

highlighting a correlation between page attributes and page structures <u>on a web site</u>,"

(Examiner's Answer at 15), and makes the same finding regarding the combination of

Weinberg and Belfiore. (*Id.* at 9-10.) The appellant argues "Weinberg does not show

highlighting the correlation between page attributes and page structures on a website. .

. ." (Appeal Br. at 12.)

"In addressing the point of contention, the Board conducts a two-step analysis.

First, we construe the representative claim at issue to determine its scope. Second, we

determine whether the construed claim would have been obvious." *Ex Parte Massingill*,

No. 2003-0506, 2004 WL 1646421, at *2 (Bd.Pat.App & Int. 2004).

a. Claim Construction

"Analysis begins with a key legal question — *what* is the invention *claimed*?"

Panduit Corp. v. Dennison Mfg. Co., 810 F.2d 1561, 1567, 1 USPQ2d 1593, 1597 (Fed.

Cir. 1987). Here, claim 1 recites in pertinent part the following limitations: "in response

to receiving said input from the user, dynamically changing the display of at least one of

said plurality of page structures if ones of said plurality of page attributes were selected

and dynamically changing the display of at least one of said plurality of page attributes

if ones of said plurality of page structures were chosen, wherein the display that is

dynamically changed reflects a correlation between said page structures and said page

attributes." The examiner and the appellant agree that the limitations require

highlighting a correlation between page attributes and page structures on a web site.

b. Obviousness Determination

"Having determined what subject matter is being claimed, the next inquiry is

whether the subject matter would have been obvious." *Massingill*, at *3. The question

of obviousness is "based on underlying factual determinations including . . . what th[e]

prior art teaches explicitly and inherently. . . ." *In re Zurko*, 258 F.3d 1379, 1383, 59

USPQ2d 1693, 1696 (Fed. Cir. 2001) (citing *Graham v. John Deere Co.*, 383 U.S. 1,

17-18, 148 USPQ 459, 467 (1966); *In re Dembiczak*, 175 F.3d 994, 998, 50 USPQ2d

1614, 1616 (Fed. Cir. 1999); *In re Napier*, 55 F.3d 610, 613, 34 USPQ2d 1782, 1784

(Fed. Cir. 1995)). Furthermore, "[n]on-obviousness cannot be established by attacking

references individually where the rejection is based upon the teachings of a

combination of references." *In re Merck*, 800 F.2d, 1091, 1097, 231 USPQ 375, 380

(Fed. Cir. 1986) (citing *In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA

1981)). "'Rather, the test is what the combined teachings of the references would have

suggested to those of ordinary skill in the art.'" *Cable Elec. Prods., Inc. v. Genmark,*

Inc., 770 F.2d 1015, 1025, 226 USPQ 881, 886-87 (Fed. Cir. 1985) (quoting *Keller*, 642

F.2d at 425, 208 USPQ at 881).

Here, claim 1 is rejected over the combination of Astiz and Weinberg and over

the combination of Belfiore and Weinberg. The examiner's finding that Astiz and

Belfiore each "teaches displaying page structure and page attributes on a web site,"

(Examiner's Answer at 15), is uncontested.

For its part, Weinberg "provid[es] a software-implemented testing tool for

generating, running, and viewing the results of tests for testing transactional servers."

(Col. 2, ll. 14-16.) "[A] transactional server may be in the form of a web server system

that allows customers to access a company's database. . . ." (Col. 1, ll. 32-34.) "[I]n

[such] a web-based implementation, the user interacts with a web server through a

browser window of the testing tool. . . ." (Col. 8, ll. 51-53.)

"The testing tool screen includes a screen capture window 206, [and] a tree

window 204. . . . The screen capture window 206 displays screens returned by the

transactional server." (Col. 8, ll. 64-67.) "The tree window 204 includes a hierarchical

representation of the steps and screens returned by the transactional server. . . ."

(Col. 9, ll. 5-7.) It is uncontested that the tool highlights a correlation between the

contents of the two windows. For its part, the reference explains that "when user data

is [sic] entered in a field of the transactional server screen displayed in the capture

window 206, such as the order type field 210, the corresponding step 212 in the tree

window 204 is highlighted. Similarly, when the user selects a step of the tree, the

corresponding server screen is displayed in the server capture window 206 and the

corresponding screen object (if any) is highlighted." (Col. 11, l. 63 - col. 12, l. 3.)

Weinberg also discloses the desirability of highlighting a correlation between the

contents of two windows. To wit, "[t]hese features assist the user in identifying the

correspondence between particular steps of the test and display elements of the

transactional server." (Col. 3, ll. 23-25.) By employing such highlighting, "the user can

easily locate a step or associated screen field, such as to modify step properties. . . ."

(Col. 12, ll. 3-5.) Because Astiz and Belfiore each displays page structure and page

attributes on a web site, and Weinberg discloses the desirability of highlighting a

correlation between the contents of two windows, we agree with the examiner's finding

that the combined teachings of the references would have suggested highlighting a

correlation between page attributes and page structures on a website. Therefore, we

affirm the rejection of claim 1 over the combination of Astiz and Weinberg and the

rejection of the same claim over the combination of Belfiore and Weinberg.[1]

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[1]"'A *prima facie* case of obviousness is established when the teachings from the
prior art itself would appear to have suggested the claimed subject matter to a person
of ordinary skill in the art.'" *In re Bell*, 991 F.2d 781, 783, 26 USPQ2d 1529, 1531 (Fed.
Cir. 1993) (quoting *In re Rinehart*, 531 F.2d 1048, 1051, 189 USPQ 143, 147 (CCPA

"When multiple claims subject to the same ground of rejection are argued as a group by appellant, the Board may select a single claim from the group of claims that are argued together to decide the appeal with respect to the group of claims as to the ground of rejection on the basis of the selected claim alone. Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately." 37 C.F.R. § 41.37(c)(1)(vii) (Sep. 30, 2004).

Here, the appellant argues claims 1, 2, 4-6, and 8, which are subject to the same rejection, as a group. (Appeal Br. at 9-12.) Having affirmed the rejection of claim 1 over the combination of Astiz and Weinberg, we also affirm the rejection of claims 2, 4-6, and 8 over those grounds.

Similarly, the appellant argues claims 1, 2, 5, and 11, which are subject to the same rejection, as a group. (Appeal Br. at 14.) Having affirmed the rejection of claim 1

1976)). Here, because Weinberg discloses a web-based implementation, wherein the user interacts with a transactional web server via a browser window of the testing tool, *supra*, we are alternatively persuaded that Weinberg, without Astiz or Belfiore, would have suggested highlighting a correlation between page attributes and page structures on a website.

over the combination of Astiz and Weinberg, we also affirm the rejection of claims 2, 5, and 11 over those grounds.

Regarding the rejection of claims 4, 6, and 8 over Belfiore, Weinberg, and Astiz, the appellant relies on his aforementioned arguments. (Appeal Br. at 15.) Having been unpersuaded by these arguments, *supra*, we likewise affirm the rejection of claims 4, 6, and 8 over Belfiore, Weinberg, and Astiz.

B. CLAIM 3

Admitting that "Astiz does not explicitly teach wherein said page attributes are keywords included in said web pages at said web site, a number of times said keywords appear, sizes of files, a number of files and date files are updated," (Examiner's Answer at 8), and that "Belfiore does not explicitly teach wherein said page attributes are keywords included in said web pages at said web site, a number of times said keywords appear, sizes of files, a number of files and date files are updated," (*id.* at 11), the examiner finds, "Kanevsky teaches attributes of an [sic] text, web-page links in cluster . . . (Kanevsky, col. 1, lines 60-65; col.5, lines 6-9; col. 7, lines 53-65; col. 9, line 55 - col.10, line 13)." (Examiner's Answer at 15.) He then asserts, "It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have modified Kanevsky's attributes of an web-page links in an object (cluster) into Belfiore's attributes in a page to provide more attributes for the user. . . ." (*Id.* at 16.)

The appellant argues, "the attributes of Kanevsky are the attributes of a cluster of icons, not the attributes of a page on a website." (Appeal Br. at 14.)

1. Claim Construction

Claim 3 recites in pertinent part the following limitations: "said page attributes are keywords included in said web pages at said web site, a number of times said keywords appear, sizes of files, a number of files and dates files are updated."

2. Obviousness Determination

Kanevsky "provide[s] a graphical user interface (GUI) and system for generating a computer GUI that automatically organizes, nests, and clusters related desktop elements, such as windows, textual and graphical elements (such as icons), for display according to a fractal appearance. . . ." (Col. 1, ll. 53-58.) The attributes cited by the examiner are "parameters regarding fractal icon clusters. . . ." (Col. 9, ll. 47-48.) Astiz, Belfiore, and Weinberg, however, lack fractal icon clusters. Without such clusters, there are no cluster parameters to display, and we see no reason to add the teachings of Kanevsky thereto. Therefore, we reverse the rejections of claim 3.

III. CONCLUSION

In summary, the rejections of claims 1, 2, 4-6, 8, and 11 under § 103(a) are affirmed. The rejections of claim 3 under § 103(a), however, are reversed.

"Any arguments or authorities not included in the brief will be refused

consideration by the Board of Patent Appeals and Interferences. . . ." 37 C.F.R.

§ 1.192(a). Accordingly, our affirmance is based only on the arguments made in the

brief. Any arguments or authorities omitted therefrom are neither before us nor at issue

but are considered waived. *Cf. In re Watts*, 354 F.3d 1362, 1367, 69 USPQ2d 1453,

1457 (Fed. Cir. 2004) ("[I]t is important that the applicant challenging a decision not be

permitted to raise arguments on appeal that were not presented to the Board.") No

time for taking any action connected with this appeal may be extended under 37 C.F.R.

§ 1.136(a)(1)(iv).

AFFIRMED-IN-PART

TERRY J. OWENS
Administrative Patent Judge   )
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